IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4621 of 2001

With

SPECIAL CIVIL APPLICATION No. 4576 of 2001

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DHORAJI MUNICIPALITY - Petitioner(s)

Versus

RAKESHVITTHALBHAITOPIA - Respondent(s)

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Appearance :

MR PREMAL R JOSHI for Petitioner No(s).: 1.

MR MURALI N DEVNANI for Respondent No(s).: 1. (SCA NO.4621 of 2001)

MR M K VAKHARIA for Respondent No(s).:1. (SCA NO.4576 of 2001)

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 15/06/2005

ORAL JUDGMENT

1.0 The petitioners herein have challenged the order dated 22.11.2000 passed by the Industrial Tribunal, Rajkot, in Reference (IT) No.339 of 2000 and 86 of 2000, whereby the said reference was disposed of in terms of the compromise purshis entered between the parties.

2.0 The brief facts of the case are that the respondent herein along with two other workmen raised a industrial dispute before the Industrial Tribunal at Rajkot by way of a Reference. Respondent workman filed statement of claim before the Tribunal for declaring him permanent in service from the date of his appointment with other consequential benefits. However, during the pendency of the said Reference, the respondent and the petitioner Municipality arrived at a compromise and the Tribunal disposed of the said Reference in terms of the said compromise entered between the parties.

2.1 However, since at a subsequent stage, the petitioner Municipality felt that the said compromise was against Government Rules and Regulations and against the provisions of the Municipalities Act, it has preferred this petition to quash and set aside the impugned order passed by the Tribunal.

3.0 Mr.P R Joshi learned advocate for the petitioner has submitted that the compromise purshis entered into with the respondent is illegal and improper because as per the Government Rules and Regulations and as per the provisions of the Municipalities Act, before making any regular appointment, permission of the competent authority is necessary and that there should be a vacant post on a permanent set up. He has, therefore, submitted that since there was no vacant post on a permanent set up and since no permission was obtained from the competent authority to fill up the post or to regularise any person, the compromise arrived at by the petitioner Municipality with the respondent is illegal and is required to be quashed and set aside.

4.0 I have heard learned counsel for the parties. Having gone through the documents placed on record, it transpires that the consent terms entered into between the parties is contrary to the statutory provisions under the Gujarat Municipalities Act. It is very clear that as per the Municipalities Act and the Government Rules and Regulations, before making any regular appointment, permission of the competent authority is necessary and there should be a vacant post on a permanent set up. In the present case, there was no vacant post on a permanent set up and no permission was obtained from the competent authority. The petitioner Municipality has not power to appoint any person,

without the prior permission of the competent authority, and therefore, it ought not to have entered into such a settlement with the respondent. Thus, in my opinion, the Industrial Tribunal has committed a grave error in disposing of the Reference in terms of the said compromise purshis.

5.0 In above view of the matter, this petition is allowed. The impugned orders dated 22.11.2000 passed by the Industrial Tribunal, Rajkot, in Reference (IT) No.339 of 2000 and 86 of 2000 are quashed and set aside. The matter is ordered to be remanded back to the Tribunal for decision afresh under the provisions of the Industrial Disputes Act, 1947. The Tribunal is directed to adjudicate the matter on merits, without being influenced by the fact that this Court has quashed its earlier orders. It is made clear that this Court has not entered into the merits of the matter. However, it shall be open to the respondent to raise all the contentions before the Tribunal for regularization of his service. Since the matter has been remanded back, the Tribunal is directed to decide the issue in question within a period of one year from the receipt of writ of this order.

6.0 With the above observations and directions, these petitions stand disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)
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